UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RICHARD DEWRAY HACKFORD, et al.

Plaintiff/Petitioner - Appellant,

v.

STATE OF UTAH et al.,; Thomas S. Monson in his capacity as President of the COP-THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a state corporation sole and THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, as aggregate community corporations; NORTHERN UTE TRIBE, a state 280 tribe and the state UTE TRIBE BUSINESS COMMITTEE

Defendants/Respondents - Appellees.

Case No. 15-4106

Appellant/Petitioner's

Opening Brief

Appellant Richard Hackford proceeding pro se, has completed Form A-12 Appellant/Petitioner's Opening Brief in its entirety with proper certificates of service furnished to the court with a Completed Certificate of Compliance.

Following Form A-12 in its entirety retyped with Appellants response answers to avoid any inconvenience of additional papers being attached and for a clear and understandable text as opposed to the Appellant's poor handwriting quality that may not be clear or properly understood by the court or the Defendants/Respondents, Appellees.

APPELLANT/PETITIONER'S OPENING BRIEF

1. STATEMENT OF THE CASE.

Appellant is an enrolled member of the Uinta Band of Utah Shoshone Indians, the treaty tribe of the Uinta Valley & Ouray Reservations in Utah. In 1954, 455 Uinta Band members were adversely affected by Public Law 671 (68 Stat. 868) of August 27, 1954 wherein said members, including Appellants mother who is Shoshone/Sioux, were falsely classified as mixed-blood Utes throughout said Act and administratively partially terminated as such in 1961.

Appellant filed eleven claims against the State of Utah et al., Duchesne and Uintah Counties, Duchesne, Roosevelt and Vernal Cities, as agents of the state and Attorneys licensed by the state. Including the COP- President Thomas S. Monson as President d/b/a *"The Corporation of the President of the Church of Jesus Christ of Latter-day Saints, a state corporation sole"*, and it's aggregate Community corporations, d/b/a *"The Church of Jesus Christ of Latter-day Saints"* and their membership that is big-business and the "*shadow-government*" behind the State government. The Appellant alleges that by and through the aggregate community corporations, the membership, runs, administers, directs, and controls every aspect of Utah's county and city governments including the state-Ute government; for the unlawful purpose of taking assumptive jurisdiction over the federal reservations by said State entities including the state-Ute allot-tees'; for directing or condoning

State, County and City Law Enforcement's harassment, assault and abusive actions toward the Appellant and other Uinta Band members; and against the Bureau of Indian Affairs (BIA) Law Enforcement Officers' for assisting the State, County, and City Officers under the state-Ute allot-tees false persona as the "Tribal" authority within the boundaries of the Uinta Valley & Ouray Reservations using the pseudonym "Ute Indian Tribe" to appear to be a lawful federal tribe under the 1934 IRA's § 16, § 17, and § 19 provisions using the pseudonym "Ute Indian Tribe," that is a euphemism for the real federal tribe that is the Uinta Band.

Appellant asserted before the District Court, that his tribal rights, title and interests derive from and are binding under the Executive Order of 1861 and the Federal Confirmation Statute of May 5, 1864 which pre-dates the State's entrance into the Union in 1896; that Appellant's federal recognition is not derived from any 1934 IRA pseudonym ("Ute Indian Tribe") but rather from Appellant's inherent treaty rights and tribal membership by Executive Order of 1861 and confirmation Statute of May 5, 1864 that could not be terminated by a Congressional Act in 1951 that only affected a completely different tribe; the Confederated Ute Tribe of Colorado-Utah.

That under said collective State governments' and their "policies" the Utah Mormons have caused harm to the Indian Appellant and harm to his three minor Indian children; that said State-Mormon governments' have violated Appellant(s)

personal civil rights, constitutional rights, community civil rights, Indian heritage, right to own property, and Indian Self-Determination under the pretense and pretext of state law and purportedly in the performance of their duties under color of state law; that the State-Mormon governmental authority dominates all public, private, and social activities of the Appellees' to such an extent that participation of the individuals in charge must be deemed to be with the authority of the state government.

2. STATEMENT OF FACTS RELEVANT TO THE ISSUES

Appellant ask the U. S. District Court of Utah to clarify which "Ute Indian Tribe" the Court has been recognizing as having legal tribal sovereignty and jurisdiction within the boundaries of the Uinta Valley & Ouray Reservations in the State of Utah, since 1954 as there are actually three; one is a state-Ute tribe consisting of Colorado Ute allot-tees that is not federally recognized, the other two are federal entities created pursuant to the 1934 IRA's § 16 - Constitution and § 17- Charter provisions both also called the "Ute Indian Tribe". Appellant raised the issue that there are three Federal Acts affecting the judicial clarification of what is meant by the term "Ute Indian Tribe" that had to be taken into consideration by the District Court's review: 1) The Confederated Colorado Ute's 1880 Agreement with the United States (21 Stat. 199) in which the Ute allot-tee became subject to state civil and criminal laws wherein they reside; 2) The Indian Reorganization

Act (48 Stat. 984; 25 U.S.C. § 467 et al.) in which only federal tribes could participate; and 3) The *Ute Termination Act* of 1951 (65 Stat. 193) that only involved the Colorado-Utah Confederated Ute allot-tees', their Court of Claims Judgment Funds and the withdrawal of federal restrictions on their individual allotments for final termination in 1964.

The District Court was asked by Appellant to make a "legal determination" by reviewing the legal effects of the above stated existing Acts of Congress upon P. L. 671 (68 Stat. 868) of August 27, 1954 called "*The Ute Partition and Termination Act*" and determine whether or not the State of Utah-COP et al., including the state-Ute allot-tees' have ignored the three referenced controlling Acts of Congress, the rule of law, and the Uinta Band of Utah Indian's treaty rights in their quest for State assumptive jurisdiction on the Uinta Valley & Ouray Reservations taken under the pretext and pretense of said P. L. 671 in 1954. These Acts are all relevant determinate factors that go to the substance and cause of Appellant's allegations of deprivations and wrong-doing by the Appellees.

The District Court has resisted said request and tried to avoid addressing the questions raised by Appellant all-together and instead insisted that Appellant is a "non-Indian" who is under state civil and criminal laws pursuant to P. L. 671 as the Appellee's only answer to Appellant's questions regarding the term "Ute Indian Tribe." The District Court and Appellees' have failed to address Appellant's

issues raised under the above Acts to verify the said allegations they have made that Appellant believes militate against the legal execution, legal operation, and legal effects of the State and local government's (including the state-Ute allot-tee government) administration of said P. L. 671, and militates against the tribal rights, title, and interests of the body politic of the "Uinta Band" within the boundaries of the Uinta Valley & Ouray Reservations that can only be legally determined by a clear and definitive understanding of the legal effects each of the Acts of Congress had/has on the constitutional creation and operation of said P. L. 671 in 1954 upon the body politic of the "Uinta Band" that is administered by the named defendants in this case under the pretense and pretext of said Act in 1954 that is now on review before the Tenth Circuit Appeals Court.

3. STATEMENT OF ISSUES

FIRST ISSUE – HISTORY

The Uinta River Valley Reservation located in the northeast corner of the State of Utah was set apart on October 3, 1861 by Executive Order 38-1 issued by President Abraham Lincoln. It was confirmed by the Senate on May 5, 1864 (13 Stat. 63) as a reservation for the Indians of Utah Territory who would settle there. These were primarily bands of Snake or Shoshone Indians that included the 'Uinta-Ats' who had lived in the Uinta River Valley Basin from time immemorial, other Shoshone bands included, but are not limited to the Timpanoys, Pah-Vant, San-

Pitch, Pi-ede, Seuvarit, Cum-mum-bah, and etc., who migrated to the reservation from the Salt Lake Valley when they were displaced by Mormon settlers and forced to move east of the Wasatch Mountains in order to survive after the Mormon leader, Brigham Young became Governor of Utah Territory in 1850. There, on the reservation, these many bands became collectively known as the "Uinta Band" of Utah Indians enjoying their exclusive solitary peace and tranquility for over twenty-years before the Utes were expelled from Colorado.

In his History of Utah (1890) p. 629, Hubert Bancroft describes these times by stating: "The natives had no alternative but to steal or starve, the white man was in possession of their pastures; game was rapidly disappearing; in the depth of winter they were starving and almost unclad, sleeping in the snow and sleet, with no covering but a cape of rabbit's fur and moccasins (sic) lined with cedar bark."

Utah Territory was partitioned in January of 1861 (12 Stat. 172) to create Colorado Territory, an area that included seven bands of Ute Indians. In 1868 the Confederated Band of Ute Indians of Colorado Territory signed a treaty with the United States (15 Stat. 619) giving them a 15-million acre reservation located in the western 1/3 of what is now the State of Colorado and thus have never been historically classified as Indians of Utah.

SECOND ISSUE – 1880 UTE AGREEMENT
(21 Stat. 199)

In 1879 the White River Band killed their Agent at the White River Agency located in the far north-end of the Confederated Ute Reservation and as a result the Confederated Ute Tribe of Colorado was disbanded by an Agreement with the United States in 1880. (21 Stat. 199).

H.R. 154, 10 Cong. Rec. 113, December 15, 1879 is a joint resolution introduced to authorize the Secretary of the Interior to declare the Ute Indian's rights to their reservation in Colorado forfeited. This was one of several bills and resolutions introduced after the so-called "Meeker massacre" calling for the expulsion of the Utes from Colorado, permanent forfeiture of reservation lands, and various other sanctions. Other examples of this related Congressional activity are found in: 10 Cong. Rec. Part 1 (1879) 30, 77; H.R. Res. 142, 10 Cong. Rec. 44; H.R. 2420, 10 Cong. Rec. 17; H.R. 5092, 10 Cong. Rec. Part 2 (1880) 1538.

On March 6, 1880, a delegation of Colorado Ute chiefs and headmen were taken to Washington in the winter of 1879 – 80 and entered into an agreement with the United States to secure the consent of their people to cede all lands that remained of the reservation in Colorado established by the Treaty of March 2, 1868 (15 Stat. 619) with the Tabeguache, (Uncompahgre) Muache, Capote, (Southern Utes) Weeminuche, (Ute Mountain Utes) Yampah, Grand River and, Uintah bands of Ute Indians of Colorado, (White Rivers).

This lead to the Act of June 15, 1880 (21 Stat. 199) by which the White River and Uncompahgre Utes ceded the entire remainder of their reservation in Colorado to the United States and agreed to accept individual allotments of unoccupied agricultural and grazing lands thereafter that would not be subject to alienation or taxation for 25 years or some longer period in the discretion of the President. The intent was termination of federal relations.

The White Rivers were expelled from Colorado and settled upon the Uinta Valley Shoshone Reservation in Utah and subsequently issued allotments in severalty. The Uncompahgre Utes was located on the Ouray Reservation running south and adjacent to the Uinta Valley Reservation until 1884 when they too were arbitrarily moved by the BIA to parts of the Uinta Valley Reservation even though they remained subject to Utah's state civil and criminal jurisdiction. (Court of Claims Case No. 45585, Special Finding of Fact No. 5, 10/05/43; 100 Ct. Cls. 413, 417)

Why both the White Rivers and Uncompahgre Utes were not given allotments on State land where they could best be managed by the State, given their state-status and eventual state-management, has never been made a point of inquiry or review and should be, the Ute allot-tees have land on their former reservation they can return to pursuant to the IRA of 1934.

The President appointed a commission with the advice and consent of the Senate to locate appropriate lands for the Uncompahgre Utes in Colorado. But a tract of land was selected in the valleys of the White and Green Rivers in Utah Territory (Royce 630) where the Uncompahgre received allotments in severalty on the Ouray Reservation but the Executive Order was never ratified by the Senate.

Section 2 of said 1880 Agreement provides that it shall be the duty of the commissioners to take a careful census of said Indians to be submitted to the Commissioner of Indian Affairs, separating them under said census as follows:

First. Those known in the agreement above referred to as Southern Utes
Second. Those known as Uncompahgre Utes
Third. Those known as White River Utes.

This delegation did not include the headmen of the Uinta Valley Shoshone Tribe of Utah Indians that is a separate and distinct tribe having an exclusive reservation in the Northeast quadrant of Utah Territory known as the Uinta River Valley.

Section 4 of this Ute 1880 Agreement provides; "That upon the completion of said allotments and the patenting of the lands to said allot-tees, each and every of the said Indians shall be subject to the provisions of section nineteen hundred and seventy-seven of the Revised Statutes (1866 Civil Rights Act) and to the laws, both civil and criminal, of the State or Territory in which they may reside."

This is a known Act of Congress and mitigating factors that has a significant direct bearing on the integrity and legal application of P. L. 671 of 1954 that was leveled against the Uinta Band of Utah Indians - by a different name, but regardless of any other fabricated identity the historic people are still the same.

A "tribe" that has been expressly terminated by the Federal Government may continue to exist for the Native Community that was the object of the legal action, but not for the purpose of interpreting a federal statute granting statutory respect for sovereignty, land base, and benefits only to federal tribes that are federally recognized tribes. The Confederated Utes' being under state law was not widely known public knowledge during the following years or common knowledge of the "Uinta Band" that holds exclusive treaty rights to the Uinta Valley Reservation.

The state-Ute Business Committee today calling itself the "Ute Indian Tribe" is a descendant group of the original individual Ute allot-tees and were born under the laws of the State of Utah. This State tribe is clearly known today as a 280 Tribe. The state-Utes today purport to be, "a federally recognized Indian Tribe, organized with a Constitution approved by the Secretary of Interior under the Indian Reorganization Act of June 18, 1934," (48 Stat. 984; 25 U.S.C. § 467 et seq.) which is only a play on words and a partial lie that has been used by the aforesaid Appellees in this case for the past sixty years to lead others away from the Ute's state-tribe status.

The State of Utah et al., and the state-Ute-tribe has little concern that the above statement is false and misleading and carries with it dire consequence to all others in business and society who are not aware of the tribe's false persona that implies having tribal sovereignty and jurisdictional powers and authority within the boundaries of the Uinta Valley & Ouray Reservations the state-Ute tribe does not actually hold under federal law.

There is no need to get into more history surrounding the above statement of historic facts to know that being a state-tribe, the state-Ute-allot-tees could not participate in any federal Act after 1880 and that each and every individual allot-tee was no longer an Indian by federal definition, and they were no longer a federally organized Tribe by operation of law after 1880. There has never been a historic federal tribe called the 'Ute Indian Tribe' located in Utah before or after 1861, the pseudonym is just a ruse and Utah-COP et.al., has always known it.

THIRD ISSUE – THE INDIAN REORGANIZATION ACT OF 1934
(48 Stat. 984; 25 U.S.C. § 467 et al.)

The IRA established a new scheme of federal regulation of Indian Affairs. Section 16 of the Act (25 U.S.C. 476) says that an Indian group may adopt a constitution and by-laws by majority vote. In the case of the Indians living on the Uinta Valley and Ouray Reservations, there was only one organized federal tribe eligible to participate in the IRA program and that was the "Uinta Band" of Utah Indians.

The White River and Uncompahgre Ute allot-tees were also living on the Uinta Valley and Ouray Reservations in 1934. However organization under § 16 of the IRA did not create tribes or restore their Federal status and did not convey any treaty rights, title or interests in the Uinta Valley Reservation land, resources and revenue therefrom that they did not lawfully possess otherwise.

In addition to providing eligibility for existing groups to organize under the 1934 IRA's section 19; there is included within the definition of a tribe, "the Indians residing on one reservation." To apply section 19, it is necessary to consider the section's definition of the term "*Indian*": [A]ll persons of Indian descent who are members of any recognized Indian tribe now under federal jurisdiction, and all persons who are descendants of such members who were on June 1, 1934, residing within the present boundaries of any Indian reservation, and … all other persons of one-half or more Indian blood. (Emphasis added)

Read together, these definitions make three classes of "Indian's residing on one reservation" eligible to organize under the IRA: (1) members of any recognized tribe now under federal jurisdiction; (2) descendants of members of any such recognized Indian tribe, who resided on any reservation on June 1, 1934; and (3) persons of one-half or more Indian blood. (Emphasis added)

Absent from these definitions is, (4) A state-recognized tribe subject to state laws and state jurisdiction, but whose individual constituent members reside within

the sovereign boundaries of an Indian reservation held by a separate "Tribe" now under federal jurisdiction.

The IRA provided that if a qualified group of Indian people followed the procedures of the Act, they could be assured of federal recognition. In particular, the Act promised that the United States would respect certain rights of a "tribe" adopting a constitution and this statute. But in exchange for these promises the "tribes" adopting IRA constitutions had to place their whole government, constitution and all, under the absolute control of the Secretary of the Interior.

Public Law 671 of 1954 is a good example of how the Secretary's absolute control worked in the absence of any Congressional over-sight when the State of Utah got involved. Nevertheless, the Ute's State status in 1934 is a determinate factor in the Ute allot-tees' eligibility to participate in the 1934 federal Act designed for federal tribes. "Federally recognized" means these tribes and groups have a special, legal relationship with the U.S. government. This relationship is referred to as a government-to-government relationship with the U.S. government wherein no decisions about their lands and people are made without their consent and the consent of the United States Government … which was not always policy.

Additionally, on Indian reservations only Federal and tribal laws apply to members of the Tribe unless Congress provides otherwise. Public Law 671 complicated these matters for the IRA's "Ute Indian Tribe" in 1954 but

nevertheless, cannot be construed as being the "express" consent of the Indians or of Congress to administratively terminate 455 members of the Uinta Band, a federal tribe of more than 900 individuals, by the mere ambiguous definition of "Mixed-blood."

Section 17 of the IRA offered another kind of trade. Indian governments which adopted the IRA constitutions could also become federally chartered corporations with power to purchase and manage property as a corporation and generally to operate as a business corporation but only if the assets are mutually owned through treaty rights. The IRA did not convey treaty rights.

The "tribe," as a corporation, becomes legally a creation of the federal government and entirely subject to federal laws and acts of Congress. These are known facts that have significant direct bearing on the integrity and legal operation of P. L. 671 of 1954 as it was then and is now applied and administered by the State of Utah and local governments, including the state-Ute allot-tee government against the treaty rights, title, and interests of the Appellant and other members of the Uinta Band, a federal tribe.

When the IRA was initiated in 1934, both IRA entities created under the § 16- Constitution and § 17- Charter were named after the "ruse" and are both a d/b/a inappropriately called the "*Ute Indian Tribe*" of the Uinta & Ouray Reservations that is listed on the Secretary's "*List of Federally Recognized Tribes*." Resulting in

there being three separate and distinct entities called the "Ute Indian Tribe" of the Uinta & Ouray Reservations in Utah… one state and two federal.

This mistake has the appearance of being by "design" to create a camouflage and future confusion which it definitely has since 1954. The "Uinta Band" is now and has always been a recognized federal tribe since 1864 but it was nevertheless erroneously organized by the BIA, under the IRA's § 16 - Constitution of the "Ute Indian Tribe" along with the state-Ute-allot-tees as a constituent Tribe using the d/b/a pseudonym – "Ute Indian Tribe" simply because they resided on a federal Indian reservation but, apparently unknown to most including the Uinta Band, (but not to Utah-COP et al.) that the Ute allot-tee could not meet any other federal qualifications.

The IRA intended that a separate tribal management Committee be established to manage the § 17 Corporate entity but on the Uinta Valley & Ouray Reservations, this intent was never instituted by the Secretary or the § 16 Tribal organization to give the Corporation a separate governing body which is curious because only the Uinta Band's Tribal Treaty Estate of 1861 is purportedly managed under the "Charter" of the corporate entity d/b/a the "Ute Indian Tribe" which would require the Uinta Band's exclusive management.

The IRA in 1934 did not purport to, and could not restore the state-Ute allot-tees' to federal status by implication or otherwise. The fact they did indeed

participate in the IRA in 1934 with the Uinta Band, was a gross mistake made by the Secretary of the Interior-BIA at that time whose job it was to know better, but that mistake could not and did not convey federal recognition to the Utes, convey or grant any tribal sovereignty, jurisdiction, treaty rights, or tribal property in Utah beyond their restricted allotments to the state-Ute allot-tee within the sovereign boundaries of the Uinta Valley & Ouray Reservations belonging to the Uinta Band of Utah Shoshone Indians – but it did leave a false impression of conformity.

The state-Ute participation in the IRA was not only a gross mistake of the Secretary/BIA but the Ute's federal status after 1880, was also a well-kept secret by those in charge at the time and for all time thereafter, that had future dire consequences attached for the 'Uinta Band' that subsequently matured into reality against the federal treaty tribe in the most egregious ways possible with the execution of P. L. 671 in 1954 and are mitigating factors in Appellant's Case

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FOURTH ISSUE – THE UTE TERMINATION ACT
Public Law 120 (65 Stat. 193) August 21, 1951

In 1950 the Confederated Ute Indians of Colorado and Utah won their case in the Court of Claims against the United States Government for payment for the reservation land in Colorado they had ceded to the United States in 1880, as a

residual result Congress withdrew the aforesaid 1880 federal restrictions on the original individual Ute allotments in 1951 by Congressional Act.

The Uinta Valley Shoshone Tribe, commonly known as the "Uinta Band" was not a party to the Ute's lawsuit or to the Ute's 1880 Agreement. Thus the Uinta Band filed a disclaimer with the Court of Claims saying it had no interest in the Ute Judgment Funds. (S. 1357)

The subsequent Act of Congress; P. L. 120 (65 Stat. 193) "*The Southern Ute Rehabilitation Planning Act*" of August 21, 1951 was intended to provide for a "Plan" to divide, distribute, and use the Ute Judgment Funds between themselves, (consisting of the Southern Utes and Ute Mountain Utes in Colorado; the White Mesa Utes, White Rivers and Uncompahgre Utes in Utah) along with the withdrawal of the federal restrictions on each and every Ute allotment. The "Plan" would include a ten year development program to complete the termination of the Confederated Ute allot-tees' after seventy years. The Secretary of the Interior was authorized by this Act, to approve and implement each Ute "program" with no further congressional legislation required, but only for this specific purpose.

During the Congressional Hearings in 1951 it was discovered that there was a group of Uinta Band members with ½ or more Ute blood that could file a lawsuit to claim a share of the Confederated Ute's Court of Claims Judgment Funds that

could delay any payment. This group of approximately 106 Uintah Utes had to be identified and partitioned from the main body politic of the Uinta Band.

The approximately 106 Uintah Utes also had an interest in the treaty assets of the Uinta Band of Utah Indians and would have to be given their individual portion of real property (allotted land with restrictions removed) and through a "paper division" of the tribal assets an individual proportionate share of all future trust revenue generated from the reservations in the form of Accounts Receivable, and ultimately their individual names would be added to the state-Ute allot-tee roll under state law (defined as "full-bloods" in P.L. 671 of 1954) and each and every Ute individual would be terminated from all federal supervision by a Secretarial Proclamation along with the individual allotted land of each and every state-Ute allot-tee, a process that would culminate in 1964 at the end of a ten-year long development program.

Because the White River and Uncompahgre Ute allot-tees were subject to State law, the State of Utah was the primary participant in the crafting of the Ute's 10-year Development and Termination Plan that would end with the withdrawal of federal restrictions on the Ute allotments and termination of the Uintah Utes with ½ or more Ute blood in 1964, but for the shenanigans pulled under the pretense and pretext of P.L. 671 the termination was never fulfilled as intended.

The 1951 Ute Termination Act dealt solely with Colorado-Utah state-Ute constituents, the Court of Claims Ute Judgment Funds, and the Uintah Utes, it cannot now be reasonably construed in any way to have applied to the remaining members of the body politic of the Uinta Valley Shoshone Tribe (Uinta Band) after the Secretary of the Interior's administrative identification and partition of the approximately 106 Uintah Utes was completed and they were added to the "full-blood Roll in 1956 regardless that the "full-blood" state-Ute allot-tee is not now, and has never been a legal representative body for the IRA's § 16 - Tribal Constitution organization and § 17 - Federally Chartered Corporation of the Uinta Valley & Ouray Reservations in Utah irrespective of Utah's desire through P. L. 671 of 1954 to artificially create such a federal persona purely for its own use and edification.

FIFTH ISSUE -THE "BOOTSTRAP" OF 1953

The Congressional Act of 1951 was "conflated" or arbitrarily combined with the Secretary of the Interior's administrative authority to make the two separate and distinctly different forms of Acts appear to be a composite whole. The Congressional Act; "*Ute Termination Act*" of 1951, and the administratively conducted Act; "*The Uinta Band Partition Act*" that was to complete with the mixed-blood and full-blood rolls in 1956, were rolled into one procedure that

came out as Utah's P. L. 671 (68 Stat. 868) of August 27, 1954, a.k.a. *The Ute Partition and Termination Act* (UPTA).

Understanding the dynamics of the "Ute Indian Tribe" of the Uinta & Ouray Reservations taking place in 1951 thru 1954 may be helpful:

Act No. 1) The "Ute Termination Act" is actually P. L. 120 (65 Stat. 193) of August 21, 1951, "*The Southern Ute Rehabilitation Planning Act*" that was intended to divided the Ute Judgement funds between themselves and the "Uintah Utes" (mixed-bloods) and terminate the restrictions on the allotted land of the entire Confederated Ute Indian allot-tees' of Utah-Colorado and place the Ute allot-tee (who had been subject to state law since 1880) and his/her allotted land both under state law and state jurisdiction by 1964. This express Congressional Act had nothing to do with the Uinta Band of Utah Shoshone Indians - a federal Tribe of separate people.

Act No. 2) Appellant finds it prudent to take caution and refrain from using the term "Ute Termination Act" when referring to P. L. 671 (68 Stat. 868) of August 27, 1954, that term implies several false notions, i.e., that the Act was an "express" Act of Congress – it was not. It was instead a Congressional Act and an administrative "Partition Act" slammed together under the Secretary of the Interior's administrative powers and authority that after commissioned by Congress carried the force of federal law upon whom it was intended, but did not,

in this case have the "chain of authority" necessary to terminate members of the Uinta Band, a federal Tribe of Shoshone Indian descent that had little and no "Ute" blood as defined in said Section 2(c) of said administrative Act, without an "express" Act of Congress to do so.

The Act of August 27, 1954, was Utah's opportunity to subvert the legal existence and continuance of all Uinta Band tribal members of the 1934 IRA's § 16 Constitutional organization called the "Ute Indian Tribe" who were not Ute's, not subject to State law, and not effected by the process of elimination to identify the 106 Uintah Utes pursuant to said Act. The remaining 800 members of the main body of the Uinta Band who had no interest in the "Ute 10-year Development and Termination Program" (after the partition of the Uintah Utes with ½ or more Ute blood) was not intended to be touched or affected by the Ute Termination Act of 1951.

HOUSE CONCURRENT RESOLUTION 108 - 1953

In the interim, Federal Policy changed to one of terminating Indian Tribes from federal supervision and in 1953 Congress issued its "new" Indian Policy in House Concurrent Resolution 108 82rd Congress, adopted on August 1, 1953. Its purpose was to eliminate the reservations and tribal government and turn Indian Affairs over to the States. Indians would become subject to State control and jurisdiction without any Federal support or restrictions. Indian land would no

longer be held in trust by the United States Government and would purportedly be fully taxable and alienable, just like non-Indian land in the States. HCR 108 was a statement of policy only, individual Acts of Congress were needed to implement the policy in regard to each *specific* tribe named to be terminated. However, the Ute Termination Legislation issued in 1951 was in effect nearly three years before HCR 108 was initiated in 1953 just in time to create the opportunity for Utah and the Secretary to "bootstrap" the Uinta Band in 1954 as mixed-blood Utes and not a *specifically* named Tribe of Uinta Valley Shoshone Indians.

SIXTH ISSUE -THE U & O RESERVATION TERMINATION ACT
Public Law 671 (68 STAT. 868) August 27, 1954

The conflated Acts of August 27, 1954 provides for "the partition and distribution of the assets of the Ute Indian Tribe of the Uinta and Ouray Reservations in Utah between the mixed-blood and full-blood members thereof; and for the termination of Federal supervision over the property of the mixed-blood members of said tribe; to provide for a development program for the full-blood members of said tribe; and for other purposes."

The Secretary of the Interior's administrative mistake injected the state-Ute-allot-tees into an Act that upon approval became a Federal law the state-Utes' were immediately disqualified from participating in regardless of their new-found federal status pursuant to said Act as "full-blood" participants in what was an unconstitutional Act when it was presented to Congress and unwittingly

commissioned in 1954 as written. It became a federal Act that was then executed by the Secretary of the Interior/BIA until the Secretary of the Interior issued his Termination Proclamation in 1961, and thereafter the Act was then, and still is today ruthlessly administered by the State of Utah and local governments including the state-Ute allot-tee government against the body politic of the Uinta Band and its members and descendants who exclusively hold all inherent treaty rights.

Said Act effectively appears to confer State authority over 455 members of the Uinta Band, a federal tribe without an "express" Act of Congress to do so. The Act treats the individuals involved as if they were all 'Utes' holding equal rights, title and interests on the Uinta & Ouray Reservations and need only to be referred to as "mixed-blood" and "full-blood." The crafters also combined the state-Ute allot-tees and only 455 members of the Uinta Band's 800 members d/b/a "The Ute Indian Tribe", a federally recognized Tribe under the 1934 IRA.

The intended result of P. L. 671 superficially turned the management of the Uinta Band's federal reservation land, trust assets, and Tribal Capital Revenue over to the State and local governments who operate as a *shadow government* behind the state-Ute "front" seen as the "Ute Indian Tribe." A façade accomplished simply by falsifying the Mixed-blood Roll of the "Ute Indian Tribe" in 1956 and by Section 5 of said Act that provides: "Effective on the date of publication of the final rolls as provided in section 8 hereof the tribe shall thereafter consist

exclusively of full-blood members. Mixed-blood members shall have no interest therein except as otherwise provided in this Act." The rest of the emancipation and acculturation process has been rendered by force as indicated in this Case.

The 1954 Act was then administered by the State and local governments after the mixed-blood termination in 1961 with minimal federal BIA involvement in the "Ute Ten Year Development Plan" that was mandated in 1951 regardless that the state-Ute allot-tee (full-bloods) and 106 Uintah Utes with ½ or more Ute blood (mixed-bloods) were being viewed by the rest of the world as a federal tribe.

The "Ute Partition and Termination Act" (P. L. 671) implies the "full-bloods" (state-Ute allot-tee) as defined by 2(b) of said Act, has federal status and tribal rights in the Uinta Valley & Ouray Reservations in Utah - which they do not.

The Act does not embrace any historic facts and federal law, but has come very close to nearly destroying a federally recognized "Uinta Band of Utah Indians" that is a constituent Tribe of the 1934 IRA's § 19, and § 16 and § 17 entities d/b/a the "Ute Indian Tribe," a federally recognized tribe of the Uinta & Ouray Reservations in Utah, listed on the Secretary of the Interior's "*List of Federally Recognized Tribes*" that remains viable but is right now dormant.

The Secretary-BIA's unethical and illegal administrative actions at each phase of the Act arbitrarily exposed the main body of the "Uinta Band," a Federal Tribe and its remaining 800 members, their tribal trust land, mineral resources,

water, and revenue appurtenant to the Uinta Valley Reservation to subterfuge, identity theft, and adverse possession by State and local governments, that includes the state-Ute-tribe government with the "art and part" participation of Agents in the BIA that has administratively continued federal services to the state-Ute allot-tee pretending to be a Federal Tribe.

The "Ute Partition and Termination Act" (P.L. 671) has never been completed or fulfilled yet the State and local governments "think" they are a quasi-state authority in charge of all the Indians living on the Uinta Valley and Ouray Reservations under the pretense and pretext of P. L. 671. The only barrier to this fanciful notion is that the State and local governments have not been able to conquer the state-Ute allot-tee's resistance to the state's efforts to not only take over their trust allotments but also take over the Uinta Valley-Ouray Reservation's trust lands with claims that the reservations have somehow been dissolved, diminished, or disestablished by various Acts of Congress.

Thus far the Federal Courts have held that they have not been so affected and the State and local governments do not have jurisdiction within the boundaries of the Uinta Valley & Ouray Reservations which necessarily includes the state-Ute allot-tee government. (See Ute I (1981); Ute II (1985); Ute III (1986); Ute IV (1996); and Ute V (1998); (D.C. Nos 2:75-CV-00408-BSJ and 2:13-CV-01070-DB-DBP); U.S. Tenth Circuit Court of Appeals Nos. 14-4028 and 14-4031)

It was not the intent of Congress in 1951 to adversely affect the IRA § 16 tribal organization's body politic of the Uinta Band members who had less than ½ Ute blood (or no Ute blood at all), and was not intended to effect in any way, the power and authority of the body politic of Uinta Band members of the Shoshone Tribe to operate and manage its Treaty Estate as a § 17 Chartered Corporation d/b/a the "Ute Indian Tribe" of the Uinta and Ouray Reservations, a Federally recognized tribe. But nevertheless, 455 members of the Uinta Band and their Treaty Estate was "bootstrapped" to Utah's state-Ute Ten Year Development and Termination Program (P.L. 671) in 1954.

The Indian Appellant claims the unlawful 'partial termination' of 455 members of the Uinta Band of Utah Shoshone Indians "*could not and did not relegate*" the Uinta Band Indians' to a so-called "non-Indian" status under the pretense and pretext of P.L. 671 of August 27, 1954. The Indian Appellant and his three minor Indian children, other enrolled family members of the Uinta Band, their families and descendants today continue to exist as a "Tribe" as they have done throughout time immemorial that "*pre-dates*" the Mormon occupation of the Salt Lake Valley under Brigham Young in 1847.

Appellant asserted before the District Court that the United States holds "Title" to the Uinta Valley & Ouray Reservations that could not be "terminated" from that trust status by the pretense and pretext of P. L. 671 in 1954 simply by

falsifying the Mixed-blood Roll that included the Indian Appellant's mother when she was 3-years old, her brother and sister, and left two brother's untouched who were born after 1954 but before 1961. The Appellant's grand-father his brothers and sisters and their children; Appellants Great-grandmother and her brothers and sisters and their children were also disenfranchised by unlawfully placing them on a so-called "Mixed-blood Roll" of the Tribe in 1956 under the pretext of P.L. 671.

Utah Mormon History purports that as Territorial Governor and Mormon President, Brigham Young's motto was; "*It's better to feed the Indians than to fight them.*" Appellant's case is all about just "how" the Utah Mormons have "*fed*" and continue to "*feed*" the Uinta Band of Utah Shoshone Indians – not with food and clothing or a job – but rather by continuing to mistreat as many as possible, inflict wrongful injuries, and today continuing to commit genocide by economic and social deprivations and persecutions against the Uinta Band members such as those that are alleged in this case. All past cries of 'religious persecution' coming from the Mormons, deserving or not, has allowed for the big-business 'build-up' of the COP state corporation sole, presently under Church President Thomas S. Monson, when all the while the Mormons are persecuting the Appellant, his three minor children and the membership of the Uinta Band in a far worse manner to eradicate the Uinta Valley and Ouray Reservations for State-Mormon possession.

As with any well-organized troops the ultimate goal is "financial gain," the gathering and collection of money and assets that are taken, in this case from the Uinta Valley & Ouray Reservations by the State and local governments, including the state-Ute government and the Ute Distribution Corporation, using the name "Ute Indian Tribe" as a "front" to avoid detection but their activities are absent all legal federal authority. Neither do the State and local governments have valid legal authority to encroach upon, tax, or build upon the federal trust and restricted reservation land of the Uinta Valley & Ouray Reservations but are doing so under the pretense and pretext of P.L. 671 and directing the state and local law enforcement officers to enforce this false authority that in most cases is with excessive force in comparison to the alleged offense. In the District Court, Appellant "*reserved his right to suit for damages at a time in the future.*"

Appellant asserts that the state-Ute allot-tees cannot and indeed do not hold any form of "federal- Indian status" within the boundaries of the Uinta Valley & Ouray Reservations by operation of law in the 1880's but somehow feel they have the power, authority, and standing to oppose the Uinta Band members' "*Indian status*" who actually do lawfully hold the treaty rights, title, and interests of the Uinta Valley Reservation that gives them federal status as an 'Indian' member of a Federal Indian Tribe within the meaning of 18 U.S.C. §§ 1152 and 1153.

Appellant's stated claims are clear that if not for the ill-advised instrument, P. L. 671 (68 Stat. 868) of August 27, 1954 that was arbitrarily designed to attack the treaty rights and tribal rights of the Uinta Band of Utah Indians this case would not have been necessary to force the attacks and depredations to stop. The Secretary of the Interior, Stewart Udall's purposeful language in the 1961 Termination Proclamation purports to administratively remove all federal supervision and the federal trust relationship over the 455 so-called mixed-bloods and their trust property (only fee land) by 1961, and thereafter they were proclaimed to be entirely subject to State jurisdiction is an exaggeration of what the Act actually calls for but nevertheless, the language of the 1961 Termination Proclamation makes the State of Utah-COP and state local governments, including the state-Ute government the exclusive responsible parties in the present case.

They alone pushed for, and accepted all liability incurred by the parties for the total operation, management and administration of said Act in 1954 that now rests squarely upon them. The only difficulty for the State with P. L. 671 and its administration -- the Indians all live on Federal Indian Reservations where the State has no jurisdiction.

The Uinta Valley & Ouray Reservations were not touched by the Act of August 27, 1954 so as to *dissolve, diminish, or disestablish* them. Thus, getting rid of the federal reservations has been the "core motivation" for all the jurisdictional

battles in the State and Federal Courts between the state-Ute Tribe and the State of Utah and local governments since 1975. The State entities have totally disregarded the fact that none of them has a legally protectable interest in the federal-tribal land or assets of the Uinta Valley & Ouray Reservation held by the Uinta Band of Utah Shoshone Indians by Executive Order 38-1 of 1861; confirmed on May 5, 1864; wherein "title" is held by the United States.

The State-COP and local governments, including the state-Ute government cannot now be allowed to exonerate themselves by trying to invoke the United States Government's fiduciary and trust responsibility over the "Ute Indian Tribe," a federally recognized tribe, after they have spent the past sixty years to so cleverly eradicate all forms of federal authority on the reservations with P. L. 671 in 1954 to the extent that there is no Federal Indian Agency engaged in federal tribe activities on the Uinta & Ouray Reservations today… it's all covert state et.al., activities on individual and reservation land where they have no jurisdiction.

The Appellees' cannot now disavow all liability they have incurred by their State administration of said Act and lay it upon the door-step of the United States Government after sixty years of vehemently denying the 455 individual so-called "mixed-blood" Indians' land ownership and their inherent treaty rights; denying them the right to a federal trust relationship with the United States Government; denying that said individual "mixed-blood" as defined by said Act of 1954 is an

"Indian" by federal definition; and, denying they are § 19 members of the 1934 IRA's § 16 and § 17 entities called the "Ute Indian Tribe", a federally recognized Tribe, that the State-COP successfully sold sixty years ago to federal authorities who unequivocally should have known better even if it was during the time of the incomprehensible "Termination Era" of the 1950's and 1960's .

Appellant's allegations have a direct bearing on the integrity and legal operation of P. L. 671 of 1954. Appellant can show that the Uinta Band of Utah Shoshone Indians is a 'federal tribe' that is not now, and has never been a part of the state-Ute allot-tee descendants living on the Uinta Valley Reservation.

Appellant alleges that the crafters of said Act of August 27, 1954 ignored at least three controlling Acts of Congress, the rule of law, due process, and the Uinta Band's inherent treaty rights to construct the defective Act, (P.L. 671) despite that the Secretary at that time had access to all the historic facts surrounding the Indians living on the Uinta Valley and Ouray Reservations including that the descendants of the former Colorado Ute allot-tees were under State law in 1954; and, that the Ute descendants today, represented as the 'Northern Ute Tribe' is a state-tribe that has never had a lawful relationship with the BIA or the programs it operates in the name of the Ute Indian Tribe.

Appellant concedes that P. L. 671 is a legal binding Act that carries the full force of law, but contends that only if it is applied to the descendants of the

original Colorado Ute allot-tees and the Uintah Utes with ½ or more Ute blood (mixed-bloods) as defined in 2(b) of said P. L. 671 for whom it was intended by Congress in the Ute Termination Act of August 21, 1951.

P. L. 671 was transformed into an "illegal" Act when the state-Ute allot-tees were inserted into said purported federal Act as "full-bloods"; when the so-called Ute Mixed-blood Roll in 1956 was falsified by not listing the 106 Uintah Utes as mixed-bloods; and when Section 5 of said Act purports to administratively restore the state-Ute allot-tee to federal status and by proxy, into a quasi-organized federal tribe, while at the same time removing the only truly viable federal tribe from its moorings under the pretense and pretext of P. L. 671 of 1954.

Thereafter, the State of Utah et al., using the state-Ute allotee (full-bloods) as a "front", with their full cooperation to subsequently take over all management of the Uinta Valley & Ouray Reservation's Tribal and individual trust assets as a "shadow government" of the Ute Indian Tribe, particularly in the development of tribal water to the state's use and revenue from gas, oil, and mineral assets, and have been hiding these take-over activities from public view behind the false persona manifested in Section 5 of P. L. 671 of 1954, that proclaims the full-blood Ute's are the exclusive federal representative body under the IRA's § 16 – Constitution which they are not.

Nothing is said about the § 17 – Corporate Charter of the "Ute Indian Tribe," that houses the Uinta Bands Treaty Estate. It was apparently just absorbed without formal gesture by the State and local governments in the take- over but it has never been dissolved by an Act of Congress so it is still a viable entity awaiting the legal tribal-federal authority of the Uinta Band to manage.

This raises other related concerns regarding acts and actions stemming from said 1954 Act that militates against the integrity and legal effects of P. L. 671 when the Act is applied only against the members of the Uinta Band of Utah Indians and against their vested treaty rights, title, and interest in the lands, resources and revenue of the Uinta Valley Reservation that still exists and are pertinent mitigating factors that should be considered in terms of federal Indian law.

SEVENTH ISSUE -AUTONOMY, FEDERAL RECOGNITION, AND THE MIXED-BLOOD ROLL IN 1956

P. L. 671 was not a conventional termination Act it was a nefarious scheme that went awry. It has been said that the tribal status of the Mixed-blood Utes is the most complex of the terminated tribes and that although the Klamath were subjected to a similar statutory scheme Congress subsequently restored the Klamath to federally recognized status in 1986.

None of the tribes terminated, including the Klamath, had a terminated state-tribe involved where it should not have been. Other terminated tribes were terminated as entire tribes, and none of the tribes had individual members singled

out and partially terminated from federal supervision just "*over particular real estate involved by the issuance of a fee patent or other similar title document, and does not mean termination of the ward-ship relationship between the Indian (mixed-bloods) and the United States on the occasion of the issuance of a so-called "Termination Proclamation*" (25 C.F.R. Part 243, Appendix F); and, none of the terminated tribes were completely "defunded" by the administrative actions of the Secretary of the Interior-BIA who systematically re-channeled all the so-called 'mixed-blood's (listed on the 1956 roll) administrative and tribal capital revenue to other non-Indian state constituents and other entities so the individual member who was organized pursuant to Section 6 of said Act as "*The Tribe of Affiliated Ute Citizens*", a federally approved tribe was dispossessed of all financial means so as to never be capable of defending against the carnage or be in a position to compel the Secretary/BIA to protect its tribal treaty rights, individual birthrights, and property rights from alienation by state courts.

A special treatment not encountered by any other "partial" or "full" termination Act of a tribe passed by Congress. A treatment not encountered by the "full-blood" group as defined by Section 2(b) of said Act of August 27, 1954.

Section 5 of the Act provided that the full-bloods would continue under the original constitution of the Ute Indian Tribe, (implying federal status) and proposed to terminate the mixed-blood group. The partition however, did not

preclude the Mixed-blood group from exercising all rights (tribal and individual) retained that are not inconsistent with said Act or other federal laws. (*See*: U.S. v. Felter, 546 F. Supp. 1002 (D. Utah, 1982) Aff'd 752 F. 2d 1505 (10 Cir. Ct. 1985) But no tribal funding did.

The Secretary submitted the "Ute Ten-Year Rehabilitation and Termination Plan" that was mandated in 1951, to Congress in the form of P.L. 671 wherein Congress approved what it thought was a unilateral extension of the 1951 Ute mandate but was actually a lateral Act containing the "bootstrap Plan" that was executed on August 27, 1954.

The question raised; Is the individual mixed-blood of the Ute Indian Tribe of the Uinta & Ouray Reservations an "Indian" as defined by federal law? "Yes" -- The individual mixed-blood listed on the so-called "Mixed-blood Roll" of the *Ute Indian Tribe* in 1956, (F.R., Vol. 20, No. 33, pages 708-718 (Feb. 3, 1955)) is an enrolled member of the Uinta Band, a Federal Tribe that is an expressly named constituent tribe of the "Ute Indian Tribe" organized and chartered under the Indian Reorganization Act of 1934, d/b/a the "Ute Indian Tribe," listed on the Secretary's "*List of Federally Recognized Tribes*" and meets all the requirements of § 19 of the IRA of 1934.

Each and every individual member of the "Uinta Band" is an "Indian" within the meaning of 18 U.S.C. §§ 1152 and 1153.[5] *See*: United States v. Rogers, 45

U.S. (4 How.) 567, 572-73, 11 L. Ed. 1105 (1846), set forth two factors to be evaluated in determining who is an Indian. A person is an Indian who (1) has a significant degree of Indian blood and (2) is recognized as an Indian by a tribe or society of Indians or by the federal government. See United States v. Dodge, 538 F. 2d 770, 786 (8th Cir. 1976), cert. denied, 429 U.S. 1099, 97 S. Ct. 1119, 51 L. Ed. 2d 547 (1977); St. Cloud v. United States, 702 F. Supp. 1456, 1460 (D.S.D. 1988); State v. LaPier, 242 Mont. 335, 790 P. 2d 983, 986 (1990); State v. Attebery, 110 Ariz. 354, 519 P. 2d 53, 54 (1974); See also Ex parte Pero, 99 F. 2d 28, 30-32 (7th Cir. 1938), cert. denied, 306 U.S. 643, 59 S. Ct. 581, 83 L. Ed. 1043 (1939); Robert N. Clinton, Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze, 18 Ariz. L. Rev. 503, 515-16 (1976).[6] *933.

We turn to the first factor, whether the individual mixed-blood has a qualifying degree of Indian blood to satisfy the first requirement under Rogers. Persons with less than one-half Indian blood have been held to have a significant degree of Indian blood. See, e.g., St Cloud, 702 F. Supp. at 1460-61 (holding 15/32 Yankton Sioux blood sufficient to establish the first Rogers requirement and citing four cases which held less than ½ Indian blood to be sufficient; Makah Indian Tribe v. Clallam County, 73 Wash. 2d 677, 440 P.2d 442, 444 (1968) (1/4 Indian blood sufficient).

Nefariously changing a Tribe's identity for special treatment does not change its character or origin. The Uinta Band has been recognized as "Indians" of Utah by the community, the state-Ute allot-tees, the State and local governments, the Mormon Church, other Indian Tribes, and the Federal Government since the 1800's and within the scope of Tribal Census Rolls taken in 1950 and by the Act itself. However, lack of enrollment does not determine Indian status for purposes of jurisdiction. See Ex parte Pero, 99 F.2d at 31; St Cloud, 702 F. Supp. At 1461; LaPier, 790 P.2d at 987.

Furthermore, the so-called mixed-bloods as defined in said P.L. 671 was individually formally recognized as a member of the "Ute Indian Tribe" evidenced by the Mixed-blood and Full-blood Rolls of the Tribe published in the Federal Register in 1956. And, by the 1937 Constitution of the Ute Indian Tribe wherein: Article II – *Membership* - Section 1. "The membership of the Ute Indian Tribe of the Uinta and Ouray Reservations shall consist as follows": 1(a) "All persons of Indian blood whose names appear on the official census roll of the Ute Indian Tribe of the Uinta and Ouray Reservation as of July 1, 1935"; 1(b) "All children born to any member of the Ute Indian Tribe of the Uinta and Ouray Reservations who is a resident of the Reservations at the time of the birth of said children." *Note*: There is no blood quantum requirement and no "Ute" blood requirement because the Uinta Band recognized the mixture of many different Indians in its

members that raised their 'Indian blood' in many cases surpassing that of the so-called "full-blood" Utes.

In Chapoose v. Uintah & Ouray Tribal Business Committee, Civ. No. 133-77, slip op. at 16-19 (Ute Tribal App. Ct. Jan. 22, 1981), the Ute Tribal Appellate Court held that Tribe membership was an automatic right for those who qualified under article II, section 1 of the Ute Constitution. Enrollment merely formalized the right.

On these facts Appellant believes the burden of factually establishing that Appellant(s) has been "recognized racially" as an "Indian" by the community in which he/she resides for the purpose of determining jurisdiction under 18 U.S.C. §§ 1152 and 1153, holding that as a Shoshone/Sioux member of the Uinta Band of Utah Indians and ultimately a member of the IRA's "Ute Indian Tribe" pursuant to the Indian Reorganization Act of 1934, the Appellant's burden has been met.

EIGHTH ISSUE - TRIBAL ACTIONS PRE - P. L. 671

On March 31, 1954, five months prior to the approval and execution of P. L. 671, the so-called "Ute Partition and Termination Act" (UPTA), the "Ute Indian Tribe" in General Council assembled passed a resolution that gave both tribal groups autonomy from one another: "That the tribe also declares it to be its policy that the full-blood as herein defined, shall have full political jurisdiction and responsibility over the persons and properties of full-blood members of the Ute

Indian Tribe and the mixed-bloods, as herein defined, shall have full political jurisdiction and responsibility over the persons and properties of said mixed-bloods of the Ute Indian Tribe."

To the extent that property or other rights survived terminations, however, the federal trust responsibility appears to continue. Termination legislation has been interpreted through the lens of the Indian law canons of construction requiring clear and specific congressional action to terminate tribal rights and powers. Thus, for example, the termination acts did not eliminate tribal existence or power for such purposes as maintaining tribal rolls, regulation of remaining reservation land, hunting, fishing, water and water rights, law and order, capacity to contract, capacity to receive grants, and standing in Court, etc.

The crafters of P.L. 671 was authorized by resolution of the "Tribe" on March 31, 1954 to merely separate the Ute constituents of the State (full-bloods) from the federal tribe of Uinta Band members and terminate partial Federal supervision over, and responsibility for particular land and the members listed on the "mixed-bloods" Roll in 1956 (which should have been the 106 Uintah Utes) without clearly defining what the term "tribal property" meant in terms of treaty rights that are held exclusively by the "*Uinta Band of Utah Indians*" who are historically primarily of Shoshone Indian descent.

It was intended that the tribal assets would undergo a "paper division" between just the Uinta Band members and be divided only as "revenue." Any other form of division would have required a second express Act of Congress to convey the actual corporeal tribal assets to individuals as implied in said Act which was never the intent of P.L. 671 because the Uinta Band members are the only lawful federal beneficiaries to the 1861-1864 Tribal Estate any other form of division and distribution would have defeated the purpose of the project.

Under the terms of said Act, the "mixed-blood" group received 27.5% of all the Ute Indian Tribe's capital revenue; right to re-organize as the "*Tribe of Affiliated Ute Citizens*" (AUC) under its federally approved Constitution as a separate and distinct identifiable tribe d/b/a the "Ute Indian Tribe," pursuant to said Act of 1954, but also a federally recognized tribe that should have been listed in its own right independently on the Secretary's list of "*Federally Recognized Tribes*" in 1956.

This re-organization and name change did not abrogate, confer, convey, diminish or abdicate the 'Uinta Band's' inherent treaty rights held by the so-called mixed-blood members as defined in section 2(c) of said Act and most particular, did not affect at all the treaty rights of the 330 other unidentified members of the Uinta Band Shoshone Tribe who were not on either Roll of the "Tribe" in 1956.

Only the 455 individual Uinta Band members listed on the Final Mixed-blood Roll in 1956, (242 children and 248 adults) were singled out and identified for special treatment under the Act; i.e. to replace the Uintah Utes for termination.

The mixed-blood group, as a separate tribe of Affiliated Ute Citizens, was also unlawfully authorized (for purposes said Act), to take any actions necessary to perform its duties under said P. L. 671 in violation of the 1934 IRA's Federal Constitution and Charter of the Ute Indian Tribe; affecting the Tribal land, tribal resources, and Capital trust funds of the treaty Tribe (Uinta Band) that it could not take by existing federal law and that the entire Uinta Band remained subject to regardless of the derogatory term "mixed-blood"; actions that were not specifically authorized by an express Act of Congress granting authority and/or not ratified by the entire "Uinta Band" of Utah Indians. The state-Ute allot-tee had/has no legally protectable interest in the Uinta Band treaty rights including all revenue. Thus, has no standing to participate in or to make such tribal decisions regardless of P. L. 671.

State corporations could not be empowered by AUC or any other entity for joint management or sale purposes of trust land or assets (for purposes said Act) until after 1961 upon the issuance of a Termination Proclamation, that only affected individually held land, but the restrictions on the land would not be released for another 10 years (1971) or until restrictions were released at the

Presidents discretion after 25 years or some longer period (as in the case of the Ute allotments) in accordance with Federal-Tribal law.

Then only the individual allotment was partially affected, not the lands held in common as reservation land. The reservation land and undivided tribal assets remained in trust and restricted status in perpetuity, the United States holding title.

P.L. 671 was not intended to be an open land or jurisdiction grab for the State or local governments of Utah or any of its constituents including the state-Ute full-bloods. But grab, they have and have tried to legalize their claim to land and state jurisdiction thru the Utah Courts without participation of the two necessary parties involved; the Uinta Band of Utah Indians who hold all rights, title, and interests in the Uinta Valley Reservation and the United States who holds the "Title." This is what precipitated the Uinta Band's "lien" on all land, water, and gas, oil and minerals in 2012-2013.

Definition of the word "Tribe" and Member of the "Tribe"

The second question raised; Is said he/she individual mixed-blood a member of, or affiliated with a "Federally recognized Tribe"? A prerequisite to invoking the protections of federal laws as opposed to State laws in Indian Country. The answer is "YES".

The Mixed-blood group unequivocally retained their tribal status and membership in the federally recognized "*Ute Indian Tribe*" of the Uinta & Ouray

Reservations in Utah, established pursuant to the 1934 IRA (48 Stat. 984; 25 U.S.C. 467 *et. seq.*) Pursuant to Sections 8, 19, 20, 21, 22, 25, 24, 14, and 15 of said P. L. 671 itself.

The Acting Assistant Solicitor, Franklin C. Salisbury, *Indian Legal Activities,* on November 30, 1956, issued a Memorandum to the Commissioner of Indian Affairs who had requested an interpretation of the word "Tribe" as used within the Act of August 27, 1954 (68 Stat. 868). He responds in part as follows:

"Tribe" is defined as "Ute Indian Tribe of the Uinta & Ouray Reservation", Utah (Section 2(a)). "Full-blood" means a member of the tribe *** Mixed-blood" means member of the tribe. Section 8 provides for the roll "of full-blood members of the tribe" and for a roll "of the mixed-blood members of the tribe." Sections 19, 20, and 21 reserve certain rights and privileges of "the tribe", and not only to the full-blood organization *** Section 25 refers to "each individual mixed-blood member of the tribe", and section 24 refers to "the business committee of the tribe representing the full-blood group thereof", also recognizing that "tribe" refers to both groups. Again, in section 14 and 15, the Act distinguishes a "member of the mixed-blood group" from "members of the tribe". In fact, throughout there is a considered use of the expressions "members of the tribe", "mixed-blood members of the tribe" and "full-blood members of the tribe", to distinguish the three classes."

"The sentence "mixed-blood members shall have no interest therein except as otherwise provided in this Act", follows the sentence in section 5, to which you refer, that the "tribe shall consist" exclusively of full-blood members after the tribal rolls have been published. In spite of the somewhat confusing language of the first sentence of this section, the second sentence clearly implies that the mixed-blood members continue to have a tribal relationship, i.e., "an interest therein in the tribe" as *** provided in this Act." In fact, this is so. You will also note that the rolls referred to in the first sentence are the rolls "of the full-blood members of the tribe" and of the "mixed-blood members of the tribe."

"It seems reasonably sure, therefore, that the word "tribe" as used in sections 15 and 22, and throughout the Act, refers to both "full-blood" and "mixed-blood" members, unless specifically limited to one or the other of these classes of tribal members."

RETAINED INTERESTS

The following is a list of the "Tribal" rights and assets retained by the surrogate "mixed-blood group" of *Affiliated Ute Citizens* of the "Ute Indian Tribe" that carries with it retained "federal status" within the meaning of Federal Indian Law. Aside from their inherent treaty rights of 1861, the 455 mixed-blood individuals retained all tribal rights that are not inconsistent with the Act. (*See*: U.S. v. Felter, 546 F. Supp. 1002 (D. Utah, 1982) Aff'd 752 F. 2d 1505 (10 Cir. Ct.

1985) and all rights contained in said P.L. 671 that includes, but are not limited to, all distributions of tribal capital trust funds, as well as trust funds from trust and restricted allotments and reservation land in the following particulars:

Retained Membership, Federal Status, and Tribal Rights
(Under the Pretext of P. L. 671 (68 Stat. 868), 1954)

Section 2 and 6 - Federal status that goes along with 2(b) membership in the "Tribe", meaning both § 16 and § 17 of the IRA's federal corporation d/b/a the "*Ute Indian Tribe*" of the Uinta & Ouray Reservations, a federally recognized tribe.

Sections 3, 5, and 8 - Membership in the §16 and §17 IRA entities (both) called the "Ute Indian Tribe", a federally recognized tribe; No blood quantum requirement in Tribe's 1937 *Constitution of the Ute Indian Tribe* whose constituents are distinctly identified as the Uinta Band, White River Band, and the Uncompahgre Ute Band.

Section 6 - Autonomy from the full-blood group; sovereignty and jurisdiction;

Section 10 - Joint management of all "undivided" tribal assets, federal services, technical services, joint law & order enforcement, independent tribal rights, and enrollment of descendants, etc.

Section 11 - Receipt of trust funds deposited in the United States Treasury collected from the Uinta & Ouray Reservations in perpetuity as accounts receivable. Right to have the Tribe of Affiliated Ute Citizens funded to pay for all administrative management and joint management activities and to receive and distribute specific tribal revenue to the individual mixed-blood his/her per capita payments.

Sections 9, 13, and 14 - Tribal assets to be jointly managed by AUC (members of the tribe) & full-bloods following division of the assets under section 10.

Section 15 - Distinguishes mixed-blood and full-blood of the "Tribe."

Section 16 - Joint management of all undividable and un-distributable trust and restricted tribal Land and assets and participation in all federal programs lawfully available to members of a federally recognized tribes infers tribal sovereignty and jurisdiction.

Section 17 - Tax exemption from Federal and State taxes, including property taxes; the state does not have lawful taxing authority.

Section 19 - Claims filed against the United States by the "Tribe" or the individual bands comprising the "Tribe," includes the mixed-blood group who are members of the "Tribe" pursuant to said Act.

Section 20 - Any valid lease, permit, license, mining, right-of-way, lien or other contract heretofore approved. Reserves certain rights and privileges to the "tribe," includes the mixed-bloods.

Section 21 - Tribal water and water rights. (includes mixed-blood members of the Tribe.)

Sections 4 and 22 - Minors tribal assets protected by the Secretary of the Interior; Maintains the trust relationship with the mixed-bloods

Section 24 - Group recognition, as members of the tribe; refers to both groups.

Section 25 - Refers to "each" individual mixed-blood member of the "Tribe".

Section 27 - Management of tribal or group assets. Any disagreement between the two tribal groups regarding the tribal assets must be presented to the

> Secretary for resolution confirms and maintains the intended perpetual government-to-government relationship with the United States Government by both autonomous groups of the "Tribe".

Assets not mentioned – but have since been determined to have survived the termination are, but not limited to, hunting and fishing, gathering rights, religious practices, customs and traditional practices on reservation land, some federal services, Indian health care, education benefits, loans, housing, etc.

NINETH ISSUE - NO FEDERAL INDIAN AGENCY OR AUTHORITY

The individual Ute allot-tees' were already subjects of State law at all times after 1880 but were nefariously included in P. L. 671's 2(b) Definition; 2(c) Definition – "mixed-blood" means a member of the tribe who does not possess sufficient Indian or Ute Indian blood to fall within the full-blood class as herein defined …" should have eliminated the main body of the Uinta Band at first read to mean that if you are not of sufficient "Ute" blood by definition of said Act to fall into the classification of "full-blood" then none of the Act's provisions thereafter apply to you .

It was a strange event when 455 members of the body politic of the "Uinta Band" were falsely listed on the so-called "Mixed-blood Roll" of the Ute Indian Tribe in 1956 in place of the 106 Uintah Utes with ½ or more Ute blood. The Act also does not specify to which "Ute Indian Tribe" it was referring, implications are

it was the IRA's § 16 and § 17 entities but with the inclusion of the state-Ute allot-tees, it strongly suggests that this is wrong; the 455 so-called mixed-blood group was actually partitioned from the "full-blood" state-Ute allot-tees instead, making it an even bigger error.

CONCLUSION

What and where the Secretary's authority lies at this point in time, can only be ascertained by a full and careful examination of the congressional foundation and administrative record surrounding the approval of P. L. 671 that Appellant alleges is the "root cause" for all the grief, suffering, and civil, and human rights violations inflicted upon Appellant as a member of the Uinta Band, over half of his life-time, at the hands of Utah's State Agency employees in the purported fulfillment of State policy under the pretense and pretext of P. L. 671 within the sovereign boundaries of the Uinta Valley and Ouray Reservations in Utah.

Appellant's case is about clarifying the State-COP and local governments' federal Indian law basis for their definition of "Ute Indian Tribe" and the term "non-Indian" as used under the pretense and pretext of P. L. 671 of 1954 against Appellant and his three minor Indian children and for the Court to confirm Appellant(s) status as "Indian" within the meaning of 18 U.S.C. §§ 1152 and 1153 and confirm that the Uinta Band of Utah Indian Tribe has retained its "federal and tribal Indian status" and holds entitlement to the federal relationship with the

United States (Trustee) and Indian Self-Determination in accordance with existing Acts of Congress and Federal Indian Law and has retained said rights throughout and even within the provisions of P. L. 671 that are all mitigating factors now under review by the Appeals Court.

The Uinta Band of Utah Shoshone Indians are not now and have never been a part of the Confederated Utes of Colorado-Utah; they were not a party to the Ute's 1880 Agreement with the United States; not a party to the Confederated Ute litigation in the Court of Claims for the loss of their land in Colorado; not a beneficiary of the Court of Claim's Ute Judgment Funds; and, not a part of the "Ute Termination Act" of August 21, 1951 (65 Stat. 193), but with the Secretary's Termination Proclamation in 1961 there ceased to be any further legitimately recognized "Federal Tribe" authority or viable Indian Agency personnel available on the reservations for protections from state depredations against the Uinta Band of Utah Shoshone Indians or any other federal Indian as a result of the State of Utah's et al., administrative pretense and pretext of said Act of 1954.

The Act set the course in which 72.83814 % of management of the Uinta Band's Treaty Estate was handed to the Confederated state-Ute allot-tees' and the State of Utah et al., and only divided thereafter as "revenue". The remaining 27.16186 % of management and revenue was given to the mixed-blood group consisting of 455 Uinta Band members, but said revenue was distributed to the

group through a state non-profit conduit corporation d/b/a the *Ute Distribution Corporation* located on the Uinta Valley Reservation. The UDC immediately (by 1959) brokered and sold an interest in the mixed-blood's individual tribal trust revenue passing through it to non-Indian Mormons in the State of Utah and others, including the Mormon Church, in the form of corporate stock shares regardless that the corporation has no assets. By 1964, only about one-half of the original mixed-blood group received their individual share of the trust fund distributions. The mixed-blood's tribal and individual financial estates today are distributed by the corporation to non-Indian stockholders, including the Mormon Church. Attorneys with a well-executed "plan" can mislead a Federal Court especially if the opponent is ignorant of pertinent facts. (*See*: Reyos v. U.S., 431 F.2d 1337 (10th Cir. 1970); Reh. Den. 11/12/1970; rev. in part 406 U.S. 128 (1972); Affiliated Ute Citizens of Utah v. U.S. , 406 U.S. 128, 92 S. Ct. 1456, (1972); Reh. Den. 407 U.S. 916, 92 S.Ct. 2430, Reh. Den. 6/12/1972; Judgment at 431 F.2d 1349 (*AUC)* affirmed; judgment at 431 F.2d 1337 (*Reyos*) affirmed in part and reversed in part.

From Utah's point of view, the State and local governments moved into complete control as the 455 Uinta Band members were processed out, via a forced termination, to accept State law as the only authority on the Uinta Valley & Ouray Reservations without their knowledge and without due process. Only the false appearance was left to give the state-Ute tribe a "front" of false power and

authority while the State and local governments exercise real power as a "*shadow-government*" behind the scenes that has subsequently given rise to the issues at hand.

The above referenced Acts are known Acts of Congress that had a significant direct bearing on the integrity and legal operation of P. L. 671 of 1954 whose administration and regulation is under the purview of the Secretary of the Interior/BIA if it is to be believed the term "Ute Indian Tribe" refers to a Federally Recognized Tribe. If so, then the Ute termination program of P.L. 671 in 1954 is legally and fundamentally flawed and should be declared null and void in its entirety … and the 1951 Ute Termination Act revisited.

It is Appellant's belief that the District Court Judges (who subscribe to the Mormon doctrine) have resisted bringing Appellant's case forward because the Court's review of the Federal record and Acts surrounding Public Law 671 of 1954 will reveal that Utah's "*Uinta & Ouray Reservation Termination Act*" (P. L. 671) is the conflation of a Congressional Act to terminate the Confederated Ute Tribe of Utah-Colorado in 1951 (P. L. 120 (65 Stat. 193) August 21, 1951) that was then coupled with an administrative act performed under the powers and authority of the Secretary of the Interior to identify and partition approximately 106 Uintah Utes with ½ or more Ute blood (who had a share of the Ute Judgment Fund) from the body politic of the Uinta Band of Utah Shoshone Indians and terminate said

Uintah Utes along with the Confederated Utes in 1964; the Act served to strategically deprive the individual persons and deceive the public, the "Uinta Shoshone Tribe" and certain aspects of the U.S. Government for sixty years.

The Appeals Court must now determine from its review and findings the validity of P.L. 671 in 1954 as written, and determine that the "*Uinta Band of Utah Shoshone Indians*" is entitled to be reaffirmed to its Federal status as a body politic and the Tribe's reservation land, assets, resources, and all tribal capital revenue should be fully recovered from the State-COP et al., including the state-Utes and restored and reaffirmed to be the exclusive inherent possession of the Uinta Band and its members as intended by the Executive Order 38-1 on October 3, 1861 and Senate confirmation of May 5, 1864 (13 Stat. 63). The Court must also find the Confederated Ute allot-tee of Utah-Colorado are not Indians by federal definition and are not today seen to be in compliance with existing Federal laws affecting them since 1880 and should be brought into compliance within state law and moved to state land and state jurisdiction as intended in 1880.

Prayer for Relief

In view of the facts herein presented it is not unreasonable to request that this Court issue an order to compel the Secretary of the Interior to revisit the history and approval of P. L. 671 and the decisions made subsequent to that

approval that was wrong and should now be corrected for the relief of the Appellant(s) and all others of the Uinta Band similarly situated.

The Appellant did not ask the District Court to re-write federal law, only that the Secretary of the Interior be compelled by said Court to issue a Secretarial Order for a comprehensive investigation and review of Public Law 671 of 1954 that is completely within his/her regulatory powers and authority to so do. Such a review and report would include all illegal and unethical State and BIA actions taken in the administration of P. L. 671 (68 Stat. 868) of August 27, 1954.

That the Secretary of the Interior issue a comprehensive "Report and Plan" that will reveal the facts surrounding the inclusion of the 455 members of the Uinta Valley Shoshone Tribe who were illegally and falsely listed on the Mixed-blood Roll of the Northern Ute Tribe in 1956 and thus "bootstrapped" to Utah's "Ute 10-year Development and Termination Program"; that the Secretary should wholly affirm all members of the Uinta Valley Shoshone Tribe to their proper and lawful status prior to 1954 and to finally bring said approved Act, (P. L. 671) into compliance with all applicable existing federal laws that effect federally recognized tribes.

This can be done within the scope and intent of the 1994 Congressional amendment (P. L. 103-263) to Section 16 (tribal constitutions) of the 1934 Indian Reorganization Act. Section 5 (b), that now "prohibits any federal agency from

promulgating or implementing any regulation or administrative decision that would classify, enhance, or diminish the privileges and immunities available to Indian tribes due to their status as Indian Tribes under the authority of the United States." The law also nullified any such regulations or decisions already in existence or in effect on the date of enactment … it is retroactive.

The entire Act (P. L. 671) and its processes was exclusively intended by Congress to be aimed at the Ute allot-tee's development and termination program under state law, an approved program that gave the State of Utah unfettered administrative control over the Act's operation within the State and state policy. The Secretary/BIA took it a step further then looked on as the State of Utah et al., under false pretenses effectively manufactured its "Ute program" that illegally included the administrative termination of 455 Uinta Valley Shoshone Tribe members of the federally recognized "Ute Indian Tribe" of the Uinta and Ouray Reservations, Utah … and did nothing.

4. Do you think the District Court applied the wrong law? If so, what law do you want applied?

Yes, the District Court failed to consider or to apply the following existing Act of Congress that must be applied in Appellant's case: The Confederated Ute's 1880 Agreement with the United States (21 Stat. 199); The Indian Reorganization

Act (48 Stat. 984) of 1934; and, Public Law 120, The Southern Ute Rehabilitation Planning Act (65 Stat. 193) of 1951.

5. Did the District Court incorrectly decide the facts? If so, what facts?

Yes, the District Court failed to recognize the Confederated Ute of Colorado-Utah's 1880 Agreement with the United States that placed the "Utes" under state civil and criminal jurisdiction, thereafter, the "Utes" ceased to be a federally recognized tribe but is a 280 state-tribe by operation of federal law.

6. Did the District Court fail to consider important grounds for relief? If so, what grounds?

Yes, the District Court failed to recognize Appellant(s) treaty rights as members of the Uinta Band of Utah Shoshone Indians pursuant to the Executive Order of 1861 and Federal confirmation of May 5, 1864. Appellant(s) have inherent vested rights, title, and interest in the tribal land, assets, resources, and revenue of the Uinta Valley Reservation that has never been relinquished, abrogated, diminished, or terminated by any "express" Act of Congress since 1861.

7. Do you feel that there are any other reasons why the District Court's judgment was wrong? If so, what?

Yes, the Corporation of the President of the Church of Jesus Christ of Latter-day Saints (COP), a state corporation sole, exercises undue influence upon the majority of the District Court Judges who subscribe to the COP/Mormon doctrine and hesitate to render a proper decision that goes against their political policies.

8. What action do you want this court to take in your case?

The Appellant(s) pray the Court will recognize the Uinta Band and Appellant(s) inherent rights, title, and interests in the reservation land, assets, natural resources, and revenue of the Uinta Valley Reservation held pursuant to the Executive Order of 1861, confirmed on May 5, 1864; that the Court will recognize the continued "Indian" status of Appellant(s) despite P.L. 671 of 1954; that the Court will recognize the federal trust status of the reservation land, assets, natural resources, and revenue to which the United States holds title; and, that this Court recognizes the Uinta Band members' rights and entitlements under the Indian Self-Determination Act; and the Court will recognize that the term "Ute Indian Tribe" should be discarded for a more proper name that depicts the actual treaty tribe known as the "*Uinta Band of Utah Shoshone Indians*" and recognize the Tribe's Federal status for the Secretary's *List of Federally recognized Tribes*.

9. Do you think the Court should hear oral arguments in this case? If so, why?

Yes, the COP-State of Utah and State-Ute allot-tees' should explain to the Appeals Court their reasoning as to how each and every individual state-Ute allot-tee is today an "Indian" by federal definition and a federal tribe under the 1934 Indian Reorganization Act's § 16, § 17, and § 19 federal requirements.

October 6, 2015
Date

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A-12 Appellant/Petitioner's Opening Brief – 06/09 Completed

CERTIFICATE OF SERIVCE

I certify that on October 6, 2015 I sent a copy of my Appellant/Petitioner's Opening Brief to the last known address by United States Priority Mail to the following:

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CERTIFICATE OF COMPLIANCE

I certify that the number of pages I am submitting as my Appellant/Petitioner's Opening Brief is 30 pages or less or alternately, if the total number of pages exceeds 30, I certify that I have counted the number of words and the total is **13,871**, which is less than 14,000. I understand that if my Appellant/Petitioner's Opening Brief exceeds 14,000 words, my brief may be stricken and the appeal dismissed.

October 6, 2015
Date

Richard Hackford
Signature